



& the Freedom of Information Act

Legal Services Corporation

Legal Services Corporation (LSC or Corporation) is a private, non-partisan, non-profit corporation established by Congress to seek to ensure equal access to justice for all Americans by providing civil legal assistance to those who otherwise would be unable to afford it. LSC was created in 1974 with bipartisan congressional sponsorship and the support of the Nixon Administration, and is funded through congressional appropriation.

LSC is headed by an 11-member Board of Directors appointed by the President, with the advice and consent of the Senate. By law, the Board is bipartisan: no more than six members may be of the same political party. LSC does not provide services directly. Rather, it provides grants to independent local programs chosen through a system of competition. Together they serve every county and congressional district in the nation, as well as the U.S. territories. For more information on LSC, please see The Legal Services Corporation Act as amended in 1977, Pub. L. Nos. 93-355 and 95-222; or on-line at <http://www.lsc.gov/>.

The Freedom of Information Act (FOIA)

President Johnson signed the FOIA bill on the Fourth of July, 1966. Since then, Congress has amended the FOIA three times: 1974, 1986, and most recently, in 1996. The FOIA refers to "agencies" but applies to the Corporation by design: when Congress chartered LSC, they specifically declared that "[t]he Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code (relating to freedom of information)." 42 U.S.C. §2996d(g).

The FOIA's roots lie in the democratic notion that government derives its power from the citizenry and must, therefore, answer to the public. Ideally, the FOIA serves as a check on governmental and political power, creating greater accountability. It also empowers the public, enabling more informed political decision-making.

The act institutionalized mechanisms by which the public can monitor government activities; these range from document publication, to individual query responses. Prior to the FOIA, government records were not readily available to the public. A citizen had to show particular need for documents in order to have access to them. Under the FOIA the presumption is reversed; executive documents are essentially public property. An agency can withhold information only if it can demonstrate how the materials fit one of nine categories of exemptions (listed in 5 U.S.C. §552(b) and 45 C.F.R. §1602.9). Additionally, the FOIA carved out avenues of appeal, providing recourse when a member of the public feels that he or she has been wrongly denied access.

LSC performs three types of information dissemination under the FOIA. The table below explains what universe of records is available via each mechanism.

Type 1: Publishing in the Federal Register (45 C.F.R. §1602.4)

If you seek information regarding:

- the Corporation's location, functions, rules of procedure, substantive rules, statements of general policy or
- how the public may obtain information, make submissions or requests, etc.

consult the Federal Register, in which the Corporation publishes organizational and operational information for public awareness; also visit us on-line at **<http://www.lsc.gov>**.

5 U.S.C. §552(a)(1)

Type 2: Public Reading Room Records (45 C.F.R. §§1602.5; 1602.6; 1602.7)

If you seek information regarding:

- Final opinions & orders issued in case adjudication, LSC President or Inspector General decisions regarding FOIA request appeals
- Policy statements/interpretations not published in the Federal Register
- Administrative staff manuals/instructions affecting the public or recipients
- Copies of records released in response to FOIA requests (type 3), for which there will likely be multiple future requests, and a general index of such records
- Other records of general interest to the public or recipients
- Annual FOIA report to the Attorney General

then the information you seek, is in the Corporation's Public Reading Room.

- **Paper Library** is housed in the Corporation's 10th Floor Library at 750 First Street, NE, Washington, DC 20002-4250
- **Electronic (on-line) Library** for reading room records LSC generates after November 1, 1996; an on-line index of reading room documents will be posted by December 31, 1999
Legal Services Corporation: **<http://www.lsc.gov>**
LSC Office of the Inspector General: **<http://oig.lsc.gov>**

Please note: Portions (up to, and including, all) of any reading room document may be withheld if exempt from the FOIA according to the same policies and restrictions governing individual written requests (Type 3).

5 U.S.C. §552(a)(2)

Type 3: Individual FOIA Document Requests (45 C.F.R. §1602.8)

If you seek information regarding any other Corporation record then you must request that information via formal FOIA document request letter (see below).

5 U.S.C. §552(a)(3)

The FOIA Document Request

- **The FOIA Document Request** is what comes to mind for most people when they consider the Freedom of Information Act. **The presumption is that Legal Services will produce any and all documents responsive to a FOIA request, which can be located with reasonable time and effort.** The LSC rule on FOIA requests is found at 45 C.F.R. §1602.8 through §1602.13.
- **There are, however, exemptions for protected materials. To the extent that one or more of these exemptions applies to a Corporation record, it will be withheld.** (45 C.F.R. §1602.9)
- **Any member of the public may request a Corporation record by submitting a request, which:**
 - is in writing¹ and clearly marked 'FOIA Request'
 - is for records other than those published in the Federal Register (Type 1) or maintained in reading rooms (Type 2)
 - is addressed to: Legal Services Corporation
FOIA Officer, Office of Legal Affairs²
750 First Street, NE
Washington, DC 20002-4250
 - reasonably describes the records sought, so that Corporation employees familiar with the subject can locate records responsive to the request with reasonable time and effort ³
 - includes any request for waiver or reduction of FOIA fees (as explained below). Fees may be waived or reduced below standard costs if disclosure of the information sought will likely contribute to public welfare or understanding, rather than commercially benefit the requester⁴

Fees:

- there is no charge for information routinely provided in the ordinary course of business
- generally, the requester is charged reasonable, going rates for labor beyond the first 2 hours (per wage bands listed 45 C.F.R. §1602.13(e)(1)), and photocopying expenses after the first 100 pages (\$.10/copy per 45 C.F.R. §1602.13(e)(3))

¹ Please note that a request may take the form of traditional letter, e-mail message to <FOIA@lsc.gov>, or fax to (202)336-8954.

² Formerly the Office of General Counsel. Improperly addressed requests shall be redirected and deemed received, upon reaching the FOIA Officer.

³ If the request is not sufficiently clear, the FOIA Officer shall notify the requester, allowing opportunity to revise the request with the Corporation's guidance. *Please see* 45 C.F.R. §1602.8(c) for more information. Additionally, there are many on-line resources which assist in writing FOIA requests.

⁴ There are four criteria for determining the public value of records: the subject of the request, the informative value of the records, the contribution to public understanding, as well as the significance of this improved understanding. *Please see* 45 C.F.R. §1602.13(f)(1) for more detail, and 45 C.F.R. §1602.13(f)(2) for criteria for assessment of commercial benefit to the requester.

• Upon Receipt of a Request, the Corporation:

- follows a self-imposed policy of mailing confirmation of receipt to requester, within **10 working days of receipt**
- notifies the requester of its determination to grant or deny⁵ the request within **20 working days of receipt** (if no determination can be dispatched in the time period, the FOIA Officer will inform the requester of the reason for delay and right to appeal (*infra*))
- responds to requests for fee reduction/waiver as promptly as possible
- prioritizes a request if qualified for **expedited treatment** per 45 C.F.R. §1602.8(m), and otherwise, treat it with ordinary diligence
- provides records in the requested form or format if readily available and makes reasonable efforts to search⁶ for records in electronic form
- compiles a record of time and number of photocopies made preparing response

• Denial of a Request, in Whole or in Part:

- the FOIA creates a presumption of public access, therefore, in order to withhold information the Corporation must meet the burden of demonstrating which of nine⁷ exemptions applies to the document and how
- **Exemptions-** a document is exempt from the FOIA, to the extent that it:
 1. is related solely to Corporation internal personnel rules and practices
 2. is specifically exempted from disclosure by statute (other than the FOIA)
 3. is privileged trade secret or commercial or financial information
 4. is an interagency or intra-agency communication, to which a third party would have access, only in litigation against the Corporation
 5. is personnel and/or medical information, the disclosure of which would constitute an unwarranted invasion of personal privacy
 6. is information compiled for law enforcement purposes (including enforcement of the LSC Act), to the extent that producing these records would:
 - (i) interfere with enforcement proceedings; *or*
 - (ii) deprive a person or recipient of the right to a fair trial/adjudication; *or*
 - (iii) constitute an unwarranted invasion of personal privacy; *or*
 - (iv) disclose the identity of a confidential source; *or*
 - (v) disclose law enforcement procedures, which may be used to elude the law; *or*
 - (vi) endanger the life or physical safety of any individual

⁵ Please see later segment regarding denying a request in whole or part.

⁶ " *Search* means to review, manually, or by automated means, agency records for the purpose of locating those records which are responsive to a request." 5 U.S.C. §552 (a)(3)(D).

⁷ Please note that the FOIA exemptions appear in 5 U.S.C. §552(b)(1) through (b)(9). The C.F.R. listing, however, is unique to the Corporation and therefore, more exact. Hence, for the purposes of this handbook the exemptions are listed at 45 C.F.R. §1602.9(a)(1) through (a)(6); the fact that there are fewer exemptions than listed in the U.S. Code merely reflects the fact that some are not applicable to the Corporation.

- **when withholding any/all of a document**, the Corporation must inform the requester which exemption applies and how, the amount of information withheld (unless disclosing the amount would harm the interest protected by the applicable exemption) and **when disclosing a redacted version**, if feasible, the explanation should be in the same location as would have been the deleted portion
- at the Corporation's discretion, records which could otherwise be withheld under an exemption, may be made available when legally permitted and not adverse to the Corporation, the public, or a recipient

- **The Appeal Process:**

- any person whose written request is denied may appeal within 90 days, by writing a letter to the Office of Legal Affairs (formerly the OGC) or OIG, as appropriate
- such a letter must be clearly marked "FOIA Appeal" (or something similar)⁸
- no personal appearance or oral argument is ordinarily permitted
- the President shall rule in writing on the appeal (as a "final appeal," this ruling shall be included in the reading room documents)⁹
- a ruling affirming a denial, shall be dispatched within 20 days and it shall respond to the appellant's arguments.

⁸ For more information regarding the language and requirements of an appeal, please refer to 45 C.F.R. §1602.12 (Appeals of denials).

⁹ Please note, that pursuant to 45 C.F.R. §1602.12 (c), the Inspector General shall make such ruling of an appeal, when the request pertains to OIG documents. Additionally, if the IG overturns a previous denial, granting access to information previously deemed exempt, the IG must confer with the LSC President. See 45 C.F.R. §1602.12 (d).